IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO.274 OF 2007

Chandrabhaga Pandurang Bhosale and another .. Appellants
v/s.
Balwant Rangrao Kakade and others .. Respondents

Mr.R.S. Kate for the appellants.

CORAM : A.M. KHANWILKAR, J.
DATED : 18TH JULY, 2007

P.C.

Counsel for the appellants contends that the trial court has rightly answered the issue regarding legal necessity in favour of the appellants and against the respondent. The appellate court, however, has considered that issue by shifting the onus on the plaintiffs, which is manifestly wrong approach and against the established legal position. The argument seems to be attractive. However, it clearly overlooks that the judgment under appeal will have to be read as a whole.

2. In my opinion, the appellate court has considered all relevant aspects in paragraphs 19 and 20 before recording the finding of legal necessity. The trial court had not considered the matter in that perspective at all. In other words, the appellate court has proceeded to accept the case of the defendant No.2 and then drew inference that those circumstances would clearly establish that there was legal necessity of the family at the relevant time. That is a matter of appreciation of the evidence. It is not a case, as was sought to be projected, that, the appellate court applied wrong principle of shifting the onus on the appellants-plaintiffs. In other words, there is tangible material on record to arrive at the

conclusion as has been reached by the appellate court to infer that there was legal necessity of the family at the relevant time.

3. No substantial question of law arises for consideration. Dismissed.

(A.M. KHANWILKAR, J.)